

other person having an interest in obtaining a waiver of the claim, caused or contributed to the accrual of the overpayment. The Department considers a debtor or any other person having an interest in obtaining a waiver of the claim to have caused or contributed to the accrual of an overpayment if—

(1) Payment resulted from the individual's incorrect but not fraudulent statement, which the individual knew or should have known to be incorrect; or

(2) Payment resulted from the individual's failure to disclose facts in his or her possession which the individual knew or should have known were material, when the Department has identified that the individual has a duty to report and has clearly notified the individual of this reporting requirement.

(3) The following factors may affect the decision as to whether the debtor is or is not at fault where the debtor submitted an incorrect statement, or the debtor failed to disclose material facts in his or her possession—

- (i) The debtor's age;
- (ii) The debtor's physical and/or mental condition; and
- (iii) The availability and nature of the information provided to the debtor by the Department.

(b) *Knowledge of an overpayment.* (1) Individuals who are aware that they are not entitled to a payment or are aware that a payment is higher than the payment to which they are entitled are not considered to have contributed to the overpayment if they promptly contact the Benefits Administrator and question the correctness of the payment and take no further action in reliance of the overpayment.

(2) Any contact made with the Benefits Administrator concerning the overpayment within 60 days of receipt (if the overpayment is a recurring payment, contact must be made within 60 days of the initial payment) will satisfy the prompt notification requirement.

(c) *Reasonable person standard.* The Department will use a reasonable person standard to determine whether an individual should have known that a statement was incorrect or that material facts in the individual's possession should have been disclosed. The reason-

able person standard will take into account the objective factors set forth in paragraph (a)(3) of this section.

#### **§ 29.523 Equity and good conscience.**

Recovery is against equity and good conscience when there is substantial evidence that—

(a) It would cause financial hardship to the person from whom it is sought no matter what the amount and length of the proposed installment;

(b) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment he or she either has relinquished a valuable right or has changed positions for the worse; or

(c) Recovery would be unconscionable under the circumstances.

#### **§ 29.524 Financial hardship.**

Financial hardship may be deemed to exist when the debtor needs substantially all of his or her current and anticipated income and liquid assets to meet current and anticipated ordinary and necessary living expenses during the projected period of collection. Financial hardship will not be found to exist when the debtor merely establishes that the repayment causes a financial burden, i.e., when it is inconvenient to repay the debt. If there are anticipated changes in income or expenses that would allow for the recovery of the overpayment at a later date, the Department may suspend collection action until a future date.

(a) *Considerations.* Pertinent considerations in determining whether recovery would cause financial hardship include the following:

(1) The debtor's financial ability to pay at the time collection is scheduled to be made, and

(2) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the debtor.

#### **§ 29.525 Ordinary and necessary living expenses.**

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, transportation, food, clothing,

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insurance (life, health, and accident), taxes, installment payments for which the individual is already liable, medical expenses, support expenses for which the individual is legally responsible, and other miscellaneous expenses that the individual can establish as being ordinary and necessary.

### § 29.526 Waiver precluded.

Waivers will not be offered or granted when—

(1) The overpayment was obtained by fraud, misrepresentation, or by improper negotiation of checks or withdrawal of electronic fund transfer payments after the death of the payee; or

(2) The overpayment was made to an estate and a timely demand for repayment is made prior to the final disbursement by the administrator or executor of the estate.

## PART 30—TARP STANDARDS FOR COMPENSATION AND CORPORATE GOVERNANCE

Sec.

30.0 Executive compensation and corporate governance.

30.1 Q-1: What definitions apply in this part?

30.2 Q-2: To what entities does this part apply?

30.3 Q-3: How are the SEOs and the most highly compensated employees identified for purposes of compliance with this part?

30.4 Q-4: What actions are necessary for a TARP recipient to comply with the standards established under sections 111(b)(3)(A), 111(b)(3)(E), 111(b)(3)(F) and 111(c) of EESA (evaluation of employee plans and potential to encourage excessive risk or manipulation of earnings)?

30.5 Q-5: How does a TARP recipient comply with the requirements under § 30.4 (Q-4) of this part that the compensation committee discuss, evaluate, and review the SEO compensation plans and other employee compensation plans to ensure that the SEO compensation plans do not encourage the SEOs to take unnecessary and excessive risks that threaten the value of the TARP recipient, or that the employee compensation plans pose unnecessary risks to the TARP recipient?

30.6 Q-6: How does a TARP recipient comply with the requirement under § 30.4 (Q-4) of this part that the compensation committee discuss, evaluate, and review the employee compensation plans to ensure that these plans do not encourage the

manipulation of reported earnings of the TARP recipient to enhance the compensation of any of the TARP recipient's employees?

30.7 Q-7: How does a TARP recipient comply with the certification and disclosure requirements under § 30.4 (Q-4) of this part?

30.8 Q-8: What actions are necessary for a TARP recipient to comply with the standards established under section 111(b)(3)(B) of EESA (the "clawback" provision requirement)?

30.9 Q-9: What actions are necessary for a TARP recipient to comply with the standards established under section 111(b)(3)(C) of EESA (the prohibition on golden parachute payments)?

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30.11 Q-11: Are TARP recipients required to meet any other standards under the executive compensation and corporate governance standards in section 111 of EESA?

30.12 Q-12: What actions are necessary for a TARP recipient to comply with section 111(d) of EESA (the excessive or luxury expenditures policy requirement)?

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30.14 Q-14: How does section 111 of EESA operate in connection with an acquisition, merger, or reorganization?

30.15 Q-15: What actions are necessary for a TARP recipient to comply with the certification requirements of section 111(b)(4) of EESA?

30.16 Q-16: What is the Office of the Special Master for TARP Executive Compensation, and what are its powers, duties and responsibilities?

30.17 Q-17: How do the effective date provisions apply with respect to the requirements under section 111 of EESA?

AUTHORITY: 12 U.S.C. 5221; 31 U.S.C. 321.

SOURCE: 74 FR 28405, June 15, 2009, unless otherwise noted.

### § 30.0 Executive compensation and corporate governance.

The following questions and answers reflect the executive compensation and corporate governance requirements of section 111 of the Emergency Economic Stabilization Act of 2008, as amended (12 U.S.C. 5221) (EESA), with respect to participation in the Troubled Assets Relief Program (TARP) established by

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